

Model Information Technology Contract for Equipment

This is one of four model contracts for the purchase of information technology goods and Services. The other three are for Software, Purchased Services, and Personal Services. The focus of this Contract is Equipment. Software licensing terms are also included to cover embedded software as well as ancillary software.

Hybrids: Purchasers will often be acquiring a combination of equipment, software and services. In those instances, Purchaser should start with the model contract that addresses the major purpose of the acquisition and then integrate additional provisions from the other pertinent models into Purchaser's contract.

Contract Number *[XXX-XXX-XXX]*

for

[describe acquisition]

between

[Purchaser]

and

[Vendor]

Effective Date: _____

[Add Effective Date]

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CONTRACT NUMBER *[XXX-XXX-XXX]*

for

[describe acquisition]

PARTIES *(required)*

Parties – This section identifies the parties entering into the Contract. It states Purchaser’s name and address and Vendor’s legal name and address.

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through *[Purchaser]*, an agency of Washington State government (“Purchaser” or “*[Purchaser]*” located at *[Purchaser address]*, and *[Vendor]*, a *[corporation/sole proprietor or other business form]* licensed to conduct business in the state of Washington (“Vendor”), located at *[Vendor address]* for the purpose of providing *[describe acquisition]*.

RECITALS

Recitals – This section provides the acquisition’s history and demonstrates the presence of consideration, a requirement for every contract.

[Include the acquisition’s history, whether the Contract resulted from an RFP, RFQ, RFQQ, sole source or other acquisition method.]

The state of Washington, acting by and through *[Purchaser]*, issued a Request for *[Proposal/Quotation/Qualifications and Quotation] [RFX]* dated *[date]*, (Exhibit A) for the purpose of purchasing *[describe acquisition]* in accordance with its authority under chapter 43.105 RCW.

[Vendor] submitted a timely Response to the *[Purchaser]*’s *[RFX]* (Exhibit B).

The *[Purchaser]* evaluated all properly submitted Responses to the above-referenced *[RFX]* and has identified *[Vendor]* as the apparently successful Vendor.

The *[Purchaser]* has determined that entering into a Contract with *[Vendor]* will meet Purchaser’s needs and will be in Purchaser’s best interest.

[If not a competitive acquisition, discuss sole source or other acquisition method in place of the above Recitals.]

NOW THEREFORE, Purchaser awards to *[Vendor]* this Contract, the terms and conditions of which shall govern Vendor’s furnishing to *[Purchaser]* the *[describe items to be purchased]*. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Definition of Terms

Definition of Terms – This section, near the beginning of the Contract, provides definitions for any potentially confusing, ambiguous, vague, or unique terms, as well as other terms that may be appropriate and useful in the Contract.

[Add or delete items so that only those definitions that are pertinent to this Contract are included.]

The following terms as used throughout this Contract shall have the meanings set forth below.

“Acceptance” shall mean that the Equipment has passed its Acceptance Testing and shall be formalized in a written notice from Purchaser to Vendor; or, if there is no Acceptance Testing, Acceptance shall occur when the Products are delivered.

“Acceptance Date” *[check RFX for which of these circumstances is appropriate]* for Vendor-installed Equipment shall mean the date upon which Purchaser Accepts the Equipment as provided in the section titled **Standard of Performance and Acceptance**; and for Purchaser-installed Equipment, shall mean the date of delivery of the Equipment, or, if delivery of partial Orders has been agreed to between Purchaser and Vendor, the last date of delivery of the components of an Order.

“Acceptance Testing” shall mean the process for ascertaining that the Equipment meets the standards set forth in the section titled **Standard of Performance and Acceptance**, prior to Acceptance by the Purchaser.

“Business Days and Hours” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

*[Be sure that the definition for Confidential Information here is consistent with the definition in the section titled **Protection of Purchaser’s Confidential Information**.]*

“Confidential Information” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or *[add other items as necessary or delete items not applicable]*.

“Contract” shall mean this document, all schedules and exhibits, and all amendments hereto.

“Delivery Date” shall mean the date by which the Products ordered hereunder must be delivered. *[If a specific date is set forth in this Contract, you may insert that date here by adding: “which shall be (fill in specific date).”]*

“[Department/Commission/Board]” shall mean the same as Purchaser.

“Effective Date” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Effectiveness Level” shall mean the percentage of time in a month that a Product is functioning properly in accordance with its Specifications.

“Equipment” shall mean the *[describe Equipment to be acquired under this Contract]* as set forth in this Contract.

“Exhibit A” shall mean the *[RFX]*.

“Exhibit B” shall mean the *[Vendor]*’s Response.

“Help Desk” shall mean a service provided by Vendor for the support of Vendor’s Products. Purchaser shall report warranty or maintenance problems to Vendor’s Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.

“Installation Date” shall mean the date by which all Equipment ordered hereunder shall be in place, in good working order *[and ready for Acceptance Testing]*. *[If a specific date is set forth in the Contract, you may insert that date here by adding: “The Installation Date shall be (fill in specific date).”]*

“Order” or **“Order Document”** shall mean any official document and attachments thereto specifying the Products and/or Services to be purchased from Vendor under this Contract.

“Price” shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.

“Product(s)” shall mean any Vendor-supplied Equipment, Software and documentation.

“Proprietary Information” shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Purchaser” shall mean the state of Washington, *[Purchaser]*, any division, section, office, unit or other entity of Purchaser or any of the officers or other officials lawfully representing Purchaser.

“Purchaser *[Project or Business]* Manager” shall mean the person designated by Purchaser who is assigned as the primary contact person whom Vendor’s Account Manager shall work with for the duration of this Contract and as further defined in the section titled **Purchaser *[Project or Business]* Manager**.

“Purchaser Contract Administrator” shall mean that person designated by Purchaser to administer this Contract on behalf of Purchaser.

“Purchaser Contracting Officer” shall mean *[name of Purchaser’s officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Purchaser Contracting Officer acting within the limits of his/her authority.

“RCW” shall mean the Revised Code of Washington.

“*[RFX]*” shall mean the Request for *[Proposal/Quotation/Qualifications and Quotation]* used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

“**Response**” shall mean Vendor’s Response to Purchaser’s *[RFX]* for *[describe acquisition]*, Exhibit B hereto.

“**Schedule A: Authorized Product and Price List**” shall mean the attachment to this Contract that identifies the authorized Products and Services and Prices available under this Contract.

“**Schedule B: Problem Escalation Procedures and Disaster Recovery Plan**” shall mean the attachment to this Contract containing Vendor’s escalation procedures and disaster recovery plan.

“**Schedule C: MWBE Certification**” shall mean the attached certificate(s) indicating Vendor’s, and/or one or more of Vendor’s Subcontractor’s status as a minority or women’s business enterprise.

“**Services**” shall mean those services provided under this Contract and related to the Products being acquired, that are appropriate to the scope of this Contract and includes such things as installation services, maintenance, training, etc.

“**Software**” shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

“**Specifications**” shall mean the technical and other specifications set forth in the *[RFX]*, Exhibit A, any additional specifications set forth in Vendor’s Response, Exhibit B, and the specifications set forth in Vendor’s Product documentation, whether or not Vendor produces such documentation before or after this Contract’s Effective Date.

“**Standard of Performance**” shall mean the criteria that must be met before Equipment Acceptance, as set forth in the section titled **Standard of Performance and Acceptance**. The Standard of Performance also applies to all additional, replacement or substitute Equipment and Equipment that is modified by or with the written approval of Vendor after having been accepted.

“**Subcontractor**” shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“**Vendor**” shall mean *[Vendor]*, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“**Vendor Account Manager**” shall mean a representative of Vendor who is assigned as the primary contact person whom the Purchaser *[Project or Business]* Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

“**Vendor Contracting Officer**” shall mean *[title of Vendor officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

“**Warranty Period**” shall mean the period of time as set forth in the section titled **Equipment Warranty** wherein Vendor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications.

“Work Product” shall mean all data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

Contract Term

2. Term *(required)*

Term – This section specifies the Contract’s Equipment purchase and Equipment maintenance effective dates, duration, and conditions for extensions.

[If the term or any subsequent term crosses biennial or fiscal year lines, specify that any purchase transacted or service performed beyond the fiscal or biennial year’s end is contingent upon receipt of funding.]

2.1. Equipment Purchase

[If this is a single purchase contract, use only the following section; otherwise, use an initial term and subsequent terms,(subsections a and b below) as applicable.]

All purchase transactions executed pursuant to this Contract’s authority shall be placed by *[date]* and Vendor shall have the Equipment delivered by the date specified in the **Delivery** section and installed by the date specified in the **Installation and Set-up** section.

[- OR -]

- a) This Contract’s initial Equipment purchase term shall be *[_____ ()]* years *[or other appropriate time period]*, commencing upon the Effective Date.
- b) This Contract’s Equipment purchase term may be extended by *[_____ ()]* additional *[one (1)]* year *[or other appropriate time period]* term[s], provided that the extensions shall be at Purchaser’s option and shall be effected by Purchaser giving written notice of its intent to extend this Contract to Vendor not less than *[thirty (30)]* calendar days *[or other appropriate time period]* prior to the then-current Contract term’s expiration and Vendor accepting such extension prior to the then-current Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

[-OR- replace subsection 2.1b) above with the following]

- b) This Contract’s Equipment purchase term shall be automatically extended for *[_____]* additional *[one (1)]* year *[or other appropriate time period]* term[s] unless Purchaser terminates by giving written notice of its decision not to extend to Vendor not less than *[thirty (30)]* calendar days *[or other appropriate time period]* prior to the then-current Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

2.2. Equipment Maintenance

- a) This Contract's initial Equipment maintenance term shall be [_____] (____) years *[or other appropriate time period]*, commencing the day following expiration of the Equipment's warranty.
- b) This Contract's Equipment maintenance term may be extended by [_____] (____) additional *[one (1)]* year *[or other appropriate time period]* term[s], provided that the extensions shall be at Purchaser's option and shall be effected by Purchaser giving written notice of its intent to extend this Contract to Vendor not less than *[thirty (30)]* calendar days *[or other appropriate time period]* prior to the then-current Contract term's expiration and Vendor accepting such extension prior to the then-current Contract term's expiration. This Contract's terms and conditions shall govern each maintenance term. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

[-OR- replace 2.2b) above with the following]

- b) This Contract's Equipment maintenance term shall be automatically extended for [_____] (____) additional *[one (1)]* year *[or other appropriate time period]* term[s] unless Purchaser terminates by giving written notice of its decision not to extend to Vendor not less than *[thirty (30)]* calendar days *[or other appropriate time period]* prior to the then-current Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

3. Survivorship *(required)*

Survivorship – This section provides for certain contractual provisions to remain in full force and effect after the Contract's expiration.

[Review the Contract after drafting is complete to determine whether additional sections should be referenced in this section.]

All purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Vendor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; License Grant; Software Ownership; Ownership/Rights in Data; Date Warranty; No Surreptitious Code Warranty; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability**, shall survive the termination of this Contract.

Pricing, Invoice and Payment

4. Pricing *(required)*

Pricing – This section establishes the conditions for Price increases and reductions, and notices thereof.

[If Purchaser wants to establish a maximum dollar amount that can be spent under the Contract, use the following subsection; otherwise delete it.]

- 4.1. The total amount expended under this Contract shall not exceed [_____] dollars [(\$_____) *[specify maximum dollar amount]*].
- 4.2. Vendor agrees to provide the Products and Services at the Prices set forth *[below or in Schedule A]*. No other Prices shall be payable to Vendor.

[Include subsections 4.3 and 4.4 only if maintenance is being purchased.]

- 4.3. Maintenance and support fees - Upon expiration of Vendor-provided warranty as set forth in the section titled **Equipment Warranty** and upon election by Purchaser to receive maintenance and support services from Vendor, Purchaser shall pay maintenance and support fees to Vendor at the Prices set forth *[below or in Schedule A]*.
- 4.4. Prices may not be increased during the initial term of the Contract.
- 4.5. If Vendor reduces its Prices for any of the Equipment or Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the Purchaser Contract Administrator with the reduced Prices within fifteen (15) Business Days *[or other appropriate time period]* of the reduction taking effect. *[– OR –]* Vendor shall send updated Prices to the Purchaser *[quarterly/semi-annually]*.

[When including subsection 4.6, Purchaser may want to consider capping potential Price increases, such as linking them to the Consumer Price Index, or not to exceed some percentage of the current prices, etc. Price caps should be included in the RFX.]

- 4.6. At least *[one hundred twenty (120)]* calendar days *[or other appropriate time period]* before the end of the then-current term of this Contract, Vendor may propose purchase Price and maintenance and support (service) rate increases by written notice to Purchaser Contract Administrator. Price adjustments will be taken into consideration by Purchaser Contract Administrator when determining whether to extend this Contract.

Price Protection – This subsection is used to guarantee that Purchaser receives Vendor's most favored customer Prices.

[Include the following subsection when federal funds are involved or in other special circumstances.]

- 4.7. Vendor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to Purchaser for subsequent purchases.

[Expenses are optional and must be appropriate to the Contract. Use the following subsection only if expenses are allowed.]

- 4.8. Purchaser shall reimburse Vendor for travel and other expenses as identified in this Contract, or as authorized in writing, in advance by Purchaser in accordance with the then-current rules and regulations set forth in the *Washington State Administrative and Accounting Manual*

(<http://www.ofm.wa.gov/policy/poltoc.htm>). Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement. *[If a maximum amount has been stated in subsection 4.1 above, add the following: “The amount reimbursed to Vendor is included in calculating the total amount spend under this Contract.”]*

5. Advance Payment Prohibited *(required)*

Advance Payments Prohibited – This section specifies that all payments must be made after the delivery of products or services. Agencies cannot issue payment prior to the performance of work, per the Washington State Constitution, Article VIII, Section 5, “Credit Not to be Loaned.”

No advance payment shall be made for the Products and Services furnished by Vendor pursuant to this Contract. *[RCW 43.88.160(5)(e) authorizes quarterly payments in advance for Equipment maintenance services. If Purchaser has agreed to such payments, insert the following: “Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.” See also subsection 7.5 for consistency. If Software maintenance and support Services are being paid for as a yearly program, ensure that the price and program are sufficiently described in the Contract and pricing schedule to ensure payment is not a violation of the advance payment prohibition.]*

6. Taxes

Taxes – This section identifies tax liability, responsibilities and exemptions for the Contract.

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor’s income or gross receipts, or personal property taxes levied or assessed on Vendor’s personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

7. Invoice and Payment *(required)*

Invoice and Payment – This section specifies invoicing instructions. For example, Purchaser may require use of State Form A-19, Invoice Voucher, for submittal of requests for payment, or Purchaser may designate how often invoices may be submitted.

[No matter what form is required for invoice submittal, ensure that the invoice contains sufficient detail and back up documentation to determine the appropriateness of the charges.]

- 7.1. Vendor will submit properly itemized invoices to *[title of person to receive invoices]* at *[appropriate address]*. Invoices shall provide and itemize, as applicable:
 - a) Purchaser Contract number *[XXX-XXX-XXX]*;
 - b) Vendor name, address, phone number, and Federal Tax Identification Number;

- c) Description of Products, including quantity ordered, model and serial numbers;
- d) Date(s) of delivery and/or date(s) of installation and set up;
- e) Price for each item, or Vendor's list Price for each item and applicable discounts;
- f) Maintenance charges;
- g) Net invoice Price for each item;
- h) Applicable taxes;
- i) Shipping costs;
- j) Other applicable charges;
- k) Total invoice Price; and
- l) Payment terms including any available prompt payment discounts.

[Include the following subsection only when expenses are allowed.]

- 7.2. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimburseable, including description, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement. (see subsection 4.8 above)
- 7.3. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Products or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.

[Include the following subsection only when Vendor indicated minority or women's business enterprise participation in its Response and Schedule C – MWBE Certification is attached.]

- 7.4. With each invoice, Vendor shall provide an *Affidavit of Amounts Paid* specifying the amounts paid to each certified MWBE under the Contract, as set forth in Section 23 below.

[Include the following subsection when hardware and/or Software maintenance and support are part of the contract.]

- 7.5. Purchaser shall pay maintenance and support charges on a monthly basis, in arrears.
[Change preceding sentence if payment is one quarter in advance, as authorized in RCW 43.88.160(5)(e). If paying for a yearly program of Software maintenance and support, ensure that the Price and program are sufficiently described in the Contract and Pricing schedule to ensure payment is not a violation of the advance payment prohibition.] Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.
- 7.6. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.
- 7.7. The Purchaser Contract number *[XXX-XXX-XXX]* must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.8. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 7.9. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or

if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Equipment or receipt of Vendor's properly prepared invoice, whichever is later.

8. Overpayments to Vendor

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, Purchaser may charge Vendor one percent (1%) per month on the amount due, until paid in full.

Vendor's Responsibilities

Vendor's Responsibilities – Sections in this category set out Vendor's responsibilities. It is one of the most important elements in the Contract and may require the most original writing. All work expectations, tasks, goals, deliverables, and milestones of the Products and Services to be provided must be clearly defined. Do not take any work for granted or plan to handle some expectations by verbal agreement. If the Service, deliverable, standard, or other expectation is not included in the Contract, its performance may not be required.

If Vendor's duties and responsibilities have been satisfactorily delineated in Exhibit A (RFX) and Exhibit B (Vendor's Response), then the specific Contract section may just reference the applicable provisions. Be sure that Exhibits A and B are incorporated by reference (see section 40 below).

9. Title to Equipment *(required)*

Title – This section assures that Vendor conveys clear title of purchased Equipment upon delivery or at the completion of Acceptance Testing and that Purchaser has the right to transfer embedded Software with a subsequent transfer of Equipment.

Upon successful completion of Acceptance Testing and receipt of Purchaser's letter of Acceptance, *[or upon delivery, if there is no Acceptance Testing]* Vendor shall convey to Purchaser good title to the Equipment free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Equipment. If Purchaser subsequently transfers title to the Equipment to another entity, Purchaser shall have the right to transfer the license to use the internal code with the transfer of Equipment title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchaser or Purchaser's transferee.

10. Shipping and Risk of Loss *(required)*

Shipping and Risk of Loss – This section establishes responsibility for cost and the method of transportation and allocates risk of loss during shipment to the installation site.

Vendor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to *[Delivery*

Date or Acceptance, whichever is applicable], except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After *[Delivery Date or Acceptance, whichever is applicable]*, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Vendor's fault or negligence.

11. Equipment Compatibility/Specifications/Configurations

Compatibility – This section provides assurance that Products will operate properly when interfacing with Purchaser's equipment.

Specifications – This section requires that Equipment conform to the Specifications.

Configurations – This section ensures that when Purchaser orders several Equipment items, such purchased Equipment will connect to and properly work with Purchaser's other equipment.

- 11.1. Vendor shall notify Purchaser of the existence of any compatibility issues between Vendor's Equipment and Purchaser's already existing or planned for hardware, software, and cabling. Purchaser will provide Vendor timely access to necessary areas and Equipment sites and shall provide Vendor with a list of any existing or planned for hardware, software, and cabling, as necessary.
- 11.2. Vendor warrants that each item of Equipment delivered hereunder will conform to that item's detailed Specifications in all respects including, but not limited to: physical characteristics, operating characteristics, space requirements, power requirements, maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties.
- 11.3. For the purpose of delivery and performance under this Contract, Equipment purchased hereunder shall be grouped together in one or more Equipment, firmware, and/or software configurations as set forth in Vendor's Response. Any such configuration shall be deemed incomplete and undelivered if any item of Equipment within that configuration has not been delivered, or if delivered, not installed or operational in accordance with this Contract's **Delivery and Installation and Set-Up** sections.
- 11.4. Purchaser shall have the right to connect the Equipment purchased hereunder to any equipment manufactured or supplied by others including other computers, peripheral equipment, terminal devices, communications equipment, software and the like that interface with the Equipment purchased hereunder.
- 11.5. If requested by Purchaser, Vendor agrees to identify, on all items of Equipment supplied under this Contract, all appropriate test points for connecting commercially available equipment monitors designed to measure system capacity, performance, or activity.

12. Delivery *(required)*

- 12.1. Vendor shall deliver the Products ordered pursuant to this Contract on or before *[specify delivery date]*, the Delivery Date. For any exception to this Delivery Date, Vendor must notify Purchaser and obtain prior approval in writing. Time is of the essence with respect to delivery and Vendor may be subject to liquidated damages and/or termination of an

Order or of this Contract and/or other damages available under law for failure to deliver on time.

- 12.2. All deliveries made pursuant to this Contract must be complete. Unless Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Order Document number. Vendor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.
- 12.3. *[Provide any other delivery instructions, e.g., truck not more than 28 feet in length, or no deliveries after 3:00 p.m., or must prearrange deliveries with specified person, etc.]*

13. Site Security

[This section should be used if Vendor will be performing any Services on Purchaser's site.]

While on Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

14. Installation and Set-up

[Use the following section if Vendor will install the Equipment. Delete this section if Purchaser will install ALL Equipment. If there is a combination, add "At Purchaser's request..." before each applicable subsection.]

- 14.1. Purchaser shall prepare the environment to house the Equipment based upon written requirements provided by Vendor in its Response, as modified in writing and agreed to by the parties. Vendor's specialists shall be available to provide required consultation related to environment preparation at no extra cost to Purchaser apart from the costs presented in Vendor's Response. Any requirements for the environment not disclosed in Vendor's Response will be completed by Vendor at no additional cost to Purchaser.
- 14.2. Vendor is hereby notified that fiber optic, communications, control systems, and other types of cable (collectively called "cabling") may be located within Purchaser's grounds and facilities.
- 14.3. Before beginning work on or about Purchaser's premises, Vendor shall contact Purchaser's communications network control center *[or other appropriate title]* to determine if Purchaser's cabling systems will be impacted and to make necessary arrangements. Prior to the commencement of any work that may impact underground utilities not owned by Purchaser, Vendor agrees to notify affected owners under the requirements of chapter 19.22 RCW, Underground Utilities.
- 14.4. Purchaser hereby permits Vendor to interface with such cabling and design engineering systems in support of the delivery of the Products and Services ordered under this Contract.
- 14.5. Vendor shall install the Equipment, ready for Acceptance Testing, on or before the Installation Date(s) *[specified in the Order Document or name the date here]*. Failure to meet the Installation Date(s) may subject Vendor to liquidated damages and/or

termination of an Order or of this Contract and other damages available under law, unless such failure is caused by acts or omissions of Purchaser.

- 14.6. After installing the Equipment, Vendor shall provide Purchaser with documentation of a successful system audit, performed at Purchaser's installation site using Vendor's diagnostic routines, as approved by Purchaser, that demonstrates that the Equipment meets or exceeds the Specifications. Vendor shall certify to Purchaser in writing that the Equipment is ready for Acceptance Testing. If after reviewing such documentation Purchaser agrees that the Equipment is ready for Acceptance Testing, Purchaser shall begin Acceptance Testing, as set forth in the section titled **Standard of Performance and Acceptance**.

15. Standard of Performance and Acceptance

Standard of Performance and Acceptance – This section establishes the standard of performance that must be met before Purchaser accepts any Product.

Acceptance testing is not always needed. When deciding whether to require acceptance testing, Purchaser can consider such things as: (1) whether the Product to be purchased performs a critical business function; (2) how well established and reliable is the technology being procured; (3) whether the Product is being customized for Purchaser; (4) how complex is the Product's installation; and (5) whether the Product is installed in conjunction with other Purchaser equipment or software. For Products whose performance has already been proven, the benefit of requiring such a provision may not justify the costs.

- 15.1. This section establishes a Standard of Performance that must be met before Acceptance. This Standard of Performance is also applicable to any additional, replacement, or substitute Product and any Product that is modified by or with the written approval of Vendor after having been Accepted.
- 15.2. The Standard of Performance for a Product is defined as a *[ninety percent (90%) or one hundred percent (100%), or other appropriate percent]* Effectiveness Level during the Acceptance Testing period set forth below.
- 15.3. The Effectiveness Level for a Product is the percentage of time in a month that the Product is functioning properly in accordance with its Specifications. The Effectiveness Level is determined by dividing the Operational Use Time of the Product by the sum of the Operational Use Time plus the Product Failure downtime, all of which shall be measured in hours and whole minutes. Operational Use Time for a Product is defined as the total time the Product would normally be used. Product Failure downtime is defined as the accumulated time during Operational Use time when work cannot be processed or accurately completed because of a Product Failure. Product Failure is defined as a malfunction in the Equipment or Software that prevents the accomplishment of the intended function(s) of the Product.
- 15.4. Downtime for each incident shall start from the time that Vendor knew or reasonably should have known of the Product Failure, or Purchaser makes a bona fide attempt to contact Vendor's designated representative at the prearranged contact point, whichever occurs earlier, until the Product is returned to fully operational status in conformance with its Specifications. During periods of Product Failure downtime, Purchaser may use operable Products when such action does not interfere with repair of the inoperable Product.

- 15.5. The Acceptance Testing period shall be *[thirty (30) or other appropriate time period]* *[calendar days/Business Days]*, starting from the day after the Product is installed and Vendor certifies that the Product is ready for Acceptance Testing. Purchaser will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.
- 15.6. In the event the Product does not meet the Standard of Performance during the initial period of Acceptance Testing, Purchaser may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. If after *[ninety (90) calendar days, or other appropriate time period]* the Product still has not met the Standard of Performance Purchaser may, at its option: (1) declare Vendor to be in breach of this Contract and terminate this Order or this Contract; or, (2) demand replacement Product from Vendor at no additional cost to Purchaser; or, (3) continue the Acceptance Testing for an additional *[thirty (30) calendar days or other appropriate time period]*. Vendor shall pay all costs related to the preparation and shipping for Product returned pursuant to this section. Purchaser's option to declare Vendor in breach and terminate this Order or this Contract shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed.
- 15.7. No Product shall be accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first Purchaser Business Day following the successful Acceptance Testing period and shall be formalized in a notice of Acceptance from Purchaser to Vendor.
- 15.8. Monthly Performance Monitoring. Throughout the warranty period and the initial and subsequent maintenance terms of this Contract, Purchaser shall monitor the Product to ensure that it conforms to the Standard of Performance established in this **Standard of Performance and Acceptance** section. Should the Product fail to operate in conformance with the Standard of Performance for any *[thirty (30) calendar days or other appropriate time period]* period, Vendor shall take corrective action as directed by Purchaser and, if the Product is Equipment, credit Purchaser a portion of the maintenance fees paid as provided in subsection 17.11 below of the **Equipment Maintenance** section.

16. Equipment Warranty

Equipment Warranty – This section specifies what Vendor will do to remedy Equipment problems during the Warranty Period.

Equipment warranties can vary considerably and Purchaser's specific needs should be considered and expressed in the RFX. A warranty is essentially a promise from Vendor that its products are of the quality and will perform as represented. The warranty is backed up by Vendor's offer to repair or replace any of its products that fail to so perform. The time period for warranties ranges from 90 days to multiple years (such as a 15-year warranty for a fiber optic cable installation), depending on the product. Vendors sometimes offer an "extended" warranty option. For example, Vendor's standard warranty is for one year, but Purchaser can purchase an extended warranty for two or three years for a correspondingly higher purchase price. Warranties are included in the purchase price.

Warranty and maintenance provisions are sometimes confused because they can appear similar. The most important distinction is that *warranty* costs are included in the purchase price whereas *maintenance* costs are paid on a periodic basis. The maintenance term and costs do not begin until the day after the Warranty Period ends.

[Items to be addressed include: how problems are reported; how long Vendor has from the report of the problem to complete the repair; will Vendor dispatch personnel to Purchaser's site; does Purchaser maintain spare parts and send the defective parts to Vendor for repair or replacement and return, etc. If Vendor submits its standard warranty with its Response and the warranty is consistent with the RFX, it can be attached as a schedule or be negotiated and added into this Contract section, along with Purchaser's requirements.]

- 16.1. Vendor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications for a period of *[one (1) year, or other time period as specified by Purchaser in the RFX or in Vendor's Response]*, the Warranty Period, commencing upon the first day after the Acceptance Date.
- 16.2. During the Warranty Period, Vendor shall adjust, repair, or replace all Equipment that is defective or not performing in conformance with the Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, shall be at Vendor's expense. Any defective Equipment shall be repaired or replaced for Purchaser so that it conforms to the Specifications.
- 16.3. Vendor agrees that all warranty service provided hereunder shall be performed by manufacturer-trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has or will obtain and pass through to Purchaser any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Equipment warranties.
- 16.4. Vendor shall provide Help Desk Services for reporting warranty issues and for troubleshooting problems. Vendor's Help Desk Services shall be *[web-based and]* accessible via e-mail or via one or more toll-free telephone lines.
- 16.5. *[Use of this subsection depends on how critical the Products and Services are to Purchaser's operation.]* Vendor shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Products and Services problems in a timely manner. The escalation procedures shall indicate the steps to be taken in response to a problem report, the contact information and title of Vendor's employee(s) responding at each level and the elapsed time before the next level of response is invoked. In addition, Vendor shall provide a copy of its disaster recovery plan for managing crisis situations in order to help avoid or reduce the potential adverse affects of catastrophic events (e.g., floods, fires, earthquakes, fuel/gas leaks rendering a building unuseable, etc.). Vendor's problem escalation procedures and disaster recovery plan are provided in Schedule B.
- 16.6. Purchaser agrees that Vendor will not be liable for any damages caused by the Purchaser's actions or failure of Purchaser to fulfill any of its responsibilities for site installation.
- 16.7. THE WARRANTIES IN THIS CONTRACT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

17. Equipment Maintenance

Equipment Maintenance – This section establishes the terms, conditions, and provisions for Equipment maintenance. The maintenance requirements and any particular Purchaser needs should be specified in the RFX.

[Negotiate with Vendor the specific requirements for the provision of maintenance. Some Vendors will provide standard maintenance programs that will meet Purchaser's needs while others will not. Ensure that late response and Equipment downtime credits and penalties are consistent with Purchaser's business needs and the specific Equipment.]

At the expiration of the Warranty Period set forth in the section titled **Equipment Warranty**, Vendor shall provide maintenance services for the Equipment as described herein, at the Prices set forth on Schedule A.

- 17.1. Vendor shall keep the Equipment in good operating condition or restore it to good working order in accordance with the Specifications or, upon Purchaser's prior written approval, to current standards.
- 17.2. Vendor shall provide contracted maintenance support *[_____ ()]* hours per day, *[_____ ()]* days per week, every day of the year *[excluding/including]* all Purchaser and Vendor recognized holidays *[or whatever terms have been agreed upon]*.
- 17.3. Purchaser shall provide Vendor access to the Equipment to perform maintenance service.
- 17.4. Preventive Maintenance. Vendor shall specify in writing the number of hours each Equipment item requires per month for preventive maintenance and the frequency and duration of such preventive maintenance. From this Vendor-supplied information Purchaser shall develop and provide to Vendor in writing the schedule within which Vendor shall provide preventive maintenance. This schedule may be modified as agreed in writing. In addition, preventive maintenance may be performed at a time convenient to Purchaser within or contiguous with remedial maintenance.
- 17.5. Remedial maintenance. Remedial maintenance shall be performed within *[_____ ()]* *[hours/days]* after notification that Equipment is malfunctioning or inoperative. Vendor shall provide Purchaser with a designated point of contact and shall provide Help Desk services as set forth in the section titled **Equipment Warranty**.
- 17.6. Upon completion of each maintenance call, Vendor shall furnish a maintenance activity report to Purchaser, which shall include, as a minimum, the following:
 - a) Date and time notified;
 - b) Date and time of arrival;
 - c) Type and serial number(s) of machine(s);
 - d) Time spent for repair;
 - e) Description of malfunction;
 - f) List of parts replaced; and
 - g) Additional charges, if applicable.

- 17.7. There shall be no additional maintenance charges for:
- a) Replacement parts;
 - b) Preventive maintenance, regardless of when performed;
 - c) Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;
 - d) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools or other required material; or
 - e) Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction has not been performed.
- 17.8. Malfunctioning Equipment must be repaired or a replacement spare installed by Vendor's qualified field engineer no later than *[the close of business on the Business Day or other appropriate option]* following notification of Equipment malfunction. Failure of Vendor to comply with this requirement shall be a Failure to Perform.

[Include subsection 17.9 when on-site parts storage is included in the purchase.]

17.9. On-Site Parts Storage

- a) For the term of maintenance service contracted for herein, Vendor shall provide a complement of spare parts for the Equipment purchased hereunder. A spare for any part that can affect subsystem operation, data availability, or performance shall be stocked at Purchaser's facility. Purchaser will provide locked and accessible storage for the on-site parts depot. These facilities shall be within a reasonable distance of the Equipment to be serviced and shall be provided at no charge to Vendor. Vendor shall be able to supply other spare parts that are stored off-site within *[one (1) hour or other appropriate time period]* of notification of a need therefor.
- b) When requested by Purchaser, Vendor shall furnish all data necessary to enable Purchaser to purchase replacement parts or have them manufactured elsewhere.

[The following requirement must be in the RFX in order to have this subsection in the Contract.]

17.10. Guaranteed *[two hour or other appropriate time]* Response Time

- a) For the term of maintenance service contracted for herein, Vendor shall provide Purchaser with a guaranteed *[two (2) hour]* maintenance response time for the Equipment purchased hereunder. Within *[two (2) hour]* after notification by Purchaser that Purchaser is experiencing Equipment problem(s), Vendor's qualified field engineer shall arrive at Purchaser's location to correct such problem. This guaranteed *[two (2) hour]* response service shall be available to Purchaser *[_____ ()]* hours per day, *[_____ ()]* days per week, every day of the year *[excluding/including]* all Purchaser and Vendor recognized holidays *[or whatever terms have been agreed upon]*.
- b) If Vendor's maintenance personnel fail to arrive at Purchaser's installation site within *[two (2) hours]*, Vendor shall be assessed liquidated damages, as set forth in the subsection of this Contract titled **Liquidated Damages – Specific**, for each "late" hour or part thereof (prorated in whole minutes) beginning with the time of notification and ending with the time of arrival.

17.11. Maintenance Credits For Equipment Malfunction

- a) Vendor shall grant a credit to Purchaser for any Equipment being maintained by Vendor that fails to perform at an Effectiveness Level of *[ninety percent (90%) or other amount specified in the section titled **Standard of Performance and Acceptance**]* during any month. The Effectiveness Level for an item of Equipment shall be defined and computed in the same manner as provided for in the **Standard of Performance and Acceptance** section of this Contract (see section 15.3 above).
- b) The credit granted by Vendor shall be *[fifty percent (50%) or other reasonable amount]* of the monthly maintenance fee for each percentage point a machine falls below its required effectiveness level. For example if the credit is 50% and the actual effectiveness level for a machine is 88% instead of the required 90%, the maintenance credit would be 100% of the monthly maintenance fee for that month, i.e., 2 percentage points below the requirement so $2 \times 50\% = 100\%$ credit.
- c) If the Equipment fails to operate at an Effectiveness Level of *[ninety percent (90%) or whatever level was established in **Standard of Performance and Acceptance**]* for two (2) consecutive months, *[or other appropriate time period]* it shall be considered a Failure to Perform.

[The following requirement must be in the RFX in order to have this subsection in the Contract.]

17.12. Local Support

Vendor's field engineers and maintenance technicians shall be based within the Olympia area. *[and/or]* at least one of Vendor's field engineering staff shall reside within Thurston County. *[and/or]* Vendor shall maintain an office either in the Olympia area or at Purchaser's site.

18. Equipment and Maintenance Documentation

Vendor shall provide two (2) complete sets of documentation for each Equipment Order, including technical, electrical, maintenance, and installation information and will provide updated documentation for the term of this Contract. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Equipment documentation shall be comprehensive, well-structured, and indexed for easy reference. If Vendor maintains its technical, electrical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Vendor may also provide such information on CD-ROM. Vendor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

19. Spare Parts for Equipment

[This section is optional, depending on the type of product being purchased, its replacement cost, and its business-driven function.]

Vendor shall make available OEM replacement parts, or Purchaser-approved equivalent, for a minimum of five (5) years *[or other reasonable time period]* from the date of the initial delivery to Purchaser.

20. Vendor Commitments, Warranties and Representations *(required)*

Vendor Commitments, Warranties and Representations – This section ensures that Vendor’s written commitments that are within the scope of this Contract are binding upon Vendor.

*[If there are specific Vendor documents to be incorporated, list them in the section titled **Section Headings, Incorporated Documents and Order of Precedence.**]*

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Response or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

21. Compliance with Standards

Vendor represents that all Equipment, Software, and elements thereof, including but not limited to documentation and source code, shall meet and be maintained by Vendor to conform to *[(the standards set forth on Schedule __)– OR – (applicable industry standards)]*.

22. Training

[Ensure that any training offered or promised and accepted is included in the Contract, either as a separate section or attached in a Schedule. A sample training section is provided below.]

22.1. Service Training. Prior to installation, Vendor agrees to provide manufacturer’s service training. Said training shall consist of manufacturer’s standard program designed for authorized service centers and/or pre-qualified staff. A fee may be charged for training, as set forth in *[Vendor’s Response or Schedule A]*.

- a) The starting dates of the training will be as agreed by the parties, but in no case later than *[day, month, year]*.
- b) The training fee, whether separately stated under the pricing provisions of this Contract or included in the cost of the Equipment, shall cover all costs of training. Purchaser shall not be responsible for any additional manufacturer’s costs for training required pursuant to this section.
- c) Purchaser shall have the right, so long as the Equipment purchased hereunder is in use by Purchaser, to give instruction to Purchaser’s personnel in all courses described above and all revisions thereto without charge, using materials supplied by Vendor. Such use by Purchaser of Vendor’s materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be a violation of or infringement upon any patent, copyright, or other proprietary right of Vendor. Vendor grants to Purchaser the right to make derivative works, update, modify, copy, or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

- 22.2. Use Training. At the time of installation, Vendor agrees to provide initial training and a six-month follow up training session, both at the installation site, for a minimum of [_____] (____) of Purchaser's staff. Such training shall be sufficiently thorough to instruct, and certify, if required, such staff in the use of the Equipment. This will include, at a minimum, orientation and familiarization training on the Equipment. Initial training shall be completed in time for the staff to operate the Equipment in the required fashion with minimum Vendor aid *[immediately after installation and testing of Equipment OR by the installation date]*.
- a) The starting dates of the training will be as agreed by the parties, but in no case later than *[day, month, year]*.
 - b) The training fee, whether separately stated under the pricing sections of this Contract or included in the cost of the Equipment, shall cover all costs of training. Purchaser shall not be responsible for any additional Vendor costs for training required pursuant to this section.
 - c) Purchaser shall have the right, so long as the Equipment purchased hereunder is in use by Purchaser, to give instruction to Purchaser's personnel in all courses described above and all revisions thereto without charge, using materials supplied by Vendor. Such use by Purchaser of Vendor's materials shall include the right to make derivative works and to reproduce the materials or derivative work solely for the permitted use, which creation, use, and reproduction shall not be a violation of or infringement upon any patent, copyright, or other proprietary right of Vendor. The above rights shall be at no additional charge.

23. Minority and Women's Business Enterprise (MWBE) Participation

[Include this section only when Vendor indicated minority or women's business enterprise participation in its Response and Schedule C – MWBE Certification is attached. If this section is not used, delete subsection 7.4 above and Schedule C.]

With each invoice for payment and within thirty (30) days of Purchaser Contract Administrator's request, Vendor shall provide Purchaser an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Vendor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Vendor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's **Review of Vendor's Records** section.

24. Protection of Purchaser's Confidential Information *(required)*

Safeguarding of Information – This section prohibits Vendor's use or disclosure of any information concerning Purchaser for any purpose not directly connected with performance of the Contract.

[If Purchaser has a unique category of Confidential Information—e.g., criminal records, health histories—include those in the list below.]

- 24.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential

Information”). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or *[add other items as necessary or delete items not applicable]*, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser’s express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

- 24.2. Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser’s option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser’s Confidential Information.

[Executive Order 00-03 requires agencies to establish reasonable procedures to review, monitor, audit, or investigate the use of personal information (included in the definition of Confidential Information) by vendors and subcontractors and provide for these procedures in contracts. The following subsection is one method. If not reasonable for this Contract, insert an alternative method for compliance.]

- 24.3. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor’s records shall be subject to inspection, review or audit in accordance with **Review of Vendor’s Records**.
- 24.4. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 24.5. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Software License

Although this is an Equipment Purchase Contract, Software licensing issues may need to be addressed. Information technology Equipment will frequently involve Software in one or more of the following ways:

1. that is an adjunct product to the Equipment;
2. that is embedded in the Equipment (sometimes called embedded chips, embedded code, firmware, or licensed internal code);
3. that is customized or developed by the Equipment Vendor for Purchaser's use.

In the first two instances, Purchaser will be buying a license to use Software that Vendor either owns outright or has the right to license to Purchaser. Section 26 will be a required term. In the third instance, Purchaser will be paying Vendor to develop Software and Section 27 will be a required term. If the acquisition involves both Vendor's Software and Software Purchaser is paying to have developed, both Sections 26 and 27 will be required terms and the types of Software covered by each section will need to be clearly delineated.

25. License Grant *(required)*

License Grant – This section is a very important element in the Contract. It documents the license's scope and magnitude and reflects the parties' mutual understanding regarding what is being licensed.

Business or Support Termination Rights – This section gives Purchaser a perpetual license in event of business termination, regardless of license term.

Freedom of Use – This section ensures that users of a computer service center have the right to use the center's Software without interference or having to obtain additional licenses.

- 25.1. Vendor grants to Purchaser a non-exclusive, perpetual *[site-wide, irrevocable, transferable – use terms as applicable]* license to use the Software and related documentation according to the terms and conditions of this Contract.

[Include the following subsection if the Contract includes the right to modify the Software.]

- 25.2. Purchaser may modify any Vendor Software and may combine such with other programs or materials to form a derivative work, provided that upon discontinuance or termination of the license, Vendor Software will be removed from the derivative work and, at Purchaser's option, either destroyed or returned to Vendor. In such situations, Purchaser retains a license only to use the Software in the derivative work.
- 25.3. Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party without the prior written consent of Vendor or Software owner.
- 25.4. Purchaser may copy each item of Software to a single hard drive *[or multiple hard drives or network, whichever is applicable]*.

- 25.5. Purchaser will make and maintain no more than one *[or other agreed upon number]* archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. Purchaser may use backup or archival copies of the Software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), without additional charge. Purchaser may make these backup or archival copies available to the disaster recovery site employees who require use of the Software in order to assist Purchaser with disaster recovery exercises. Purchaser agrees that production use of the Software at the disaster recovery site(s) shall be limited to times when Purchaser's facilities, or any portion thereof, are inoperable due to emergency situations.

[Include subsection 25.6 if the Contract is not for a perpetual license. Purchaser should negotiate with Vendor to obtain a set price for the conversion to perpetual licenses rather than agree to pay the then-current rates.]

- 25.6. Business or Support Termination Rights. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the Contract Prices.

- 25.7. Freedom of Use. Vendor understands that Purchaser may provide information processing services to other users that are agencies of state government and other tax supported entities. Vendor further understands that Purchaser or other users that are agencies of state government and other tax-supported entities may provide services to the public through Internet applications. Software delivered hereunder may be used in the delivery of these services. Vendor acknowledges and agrees that such use of Software products is acceptable under the licensing agreements contained herein.

[Include subsection 25.8 only if the Software is associated with a specific machine or piece of Equipment.]

- 25.8. Purchaser may move Software from one device to another provided such Software is completely removed from the first device after a reasonable testing period on the new device.

26. Software Ownership *(required)*

Software Ownership – This section provides Vendor's warranty that Vendor is the owner of the Software and/or has unrestricted rights to license it to Purchaser.

[Use the following subsection when Purchaser is acquiring a license, not ownership.]

Vendor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Vendor hereby warrants and represents to Purchaser that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any third party worldwide. Vendor represents and warrants that Vendor has the right to license the Software to Purchaser as provided in this Contract; and that Purchaser's use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent

trademark or other intellectual property right worldwide or violate any third party's trade secret, contract or confidentiality rights worldwide. Vendor represents and warrants that: (i) Vendor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Vendor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

27. Ownership/Rights in Data *(required)*

Ownership/Rights in Data – These sections ensure that data and work product originating from the Contract shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by Purchaser.

[Include the following subsections when Purchaser is acquiring ownership of Software or Work Product.]

- 27.1. Purchaser and Vendor agree that all data and work products (collectively “Work Product”) produced pursuant this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchaser. Vendor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 27.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to Purchaser, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 27.3. Vendor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.
- 27.4. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership of any Work Product, without the prior written permission of Purchaser. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 27.5. Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so, except that such license shall be limited to the extent to which Vendor has a right to grant such a license. Vendor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Vendor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting

Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Vendor.

28. Software Specifications

All Software will conform to its Specifications. Vendor warrants that Products delivered hereunder shall perform in accordance with these Specifications.

29. Compliance with Standards

Compliance with Standards – This section requires Vendor to comply with specified Software standards: Purchaser’s, American National Standards Institute (ANSI), International Standards Organization (ISO), or other standards.

29.1. Vendor represents that all Software and elements thereof, including but not limited to, documentation and source code, shall meet and be maintained by Vendor to conform to *[(the standards set forth in RFX, Response, on an attached Schedule) – OR – (applicable industry standards)]*.

[Use of one of the following subsections is optional. Do not use both. They require Vendor to meet minimum standards for quality assurance. In many cases, neither will be used since many companies have not attained either type of certification; however, consider these clauses in cases where quality and reliability are exceptionally important.]

29.2. Vendor warrants that it has received certification from an authorized certifying authority that its Software quality assurance practices conform to the requirements of the current version of the International Standards Organization (ISO), ISO-9001 standard “Quality systems - Model for quality assurance in design, development, production, installation and servicing” and that this certification was received within one (1) year of execution of this Contract. Vendor further warrants that it will maintain its quality assurance practices and certification in conformance with the ISO-9001 during the term of this Contract.

[-OR- substitute the paragraph below for subsection 29.2]

Vendor warrants that its Software development process has been assessed by a certified Software Capability Evaluator, as defined by the Software Engineering Institute, and found to conform to the requirements of a Level 2 development process as defined by the current version of the Capability Maturity Model (CMM), also defined by the Software Engineering Institute. Vendor further warrants that it will maintain or improve its Software development process at Level 2 or above during the term of this Contract.

30. Date Warranty *(required)*

Vendor warrants that all Products provided under this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Products, or interact with date records of the Products (“Date Warranty”). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains unresolved

after three (3) calendar days, at Purchaser's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

31. Physical Media Warranty

- 31.1. Vendor warrants to Purchaser that each licensed copy of the Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of Acceptance of the Software copy by Purchaser.
- 31.2. Vendor shall replace, at Vendor's expense including shipping and handling costs, any Software copy provided by Vendor that does not comply with this warranty.

32. No Surreptitious Code Warranty *(required)*

- 32.1. Vendor warrants to Purchaser that no licensed copy of the Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. Vendor further warrants Vendor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out or other function, implemented by any type of means or under any circumstances, which may restrict Purchaser's use of or access to any program, data or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Purchaser under this Contract. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 32.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.
- 32.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 32.4. Vendor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

33. Reauthorization Code Required

If a reauthorization code must be keyed in by Vendor for the Software to remain functional upon movement to another computer system, Vendor shall provide the reauthorization code to

Purchaser within one (1) Business Day after receipt of Purchaser's notice of its machine upgrade or movement.

[- OR -]

If a reauthorization code must be keyed in by Vendor for the Software to remain functional upon movement to another computer system, Vendor shall provide the reauthorization code to Purchaser: (i) in connection with a machine upgrade or other movement for which Purchaser pays Vendor a machine upgrade fee as set forth in Schedule A, immediately upon receipt of such fee; or (ii) if Purchaser need not pay a fee or other charge in connection with the machine upgrade or other movement, within one (1) Business Day after receipt of Purchaser's notice of its machine upgrade or movement.

[If Purchaser is acquiring a site license, unlimited CPU license, or other similar license, use the following:]

Vendor's Software shall not require a reauthorization code in order for the Software to remain functional upon Purchaser's movement of the Software to another computer system.

34. Software Upgrades and Enhancements

Software Upgrade and Enhancement – This section establishes conditions for upgrade, downgrade, trade-ins, etc., for exchange of Software.

[Add to or delete from the following list, if purchasing this coverage; otherwise delete entire section.]

Vendor shall:

- 34.1. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- 34.2. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Products supplied to Purchaser; and
- 34.3. Supply at no additional cost interface modules that are developed by Vendor for interfacing the Software to other Software products.

35. Software Maintenance and Support Services

Software Maintenance and Support Services – This section establishes Vendor's responsibility to correct problems, provide updates and support of the Software.

[Negotiate this section with Vendor. Do not include it if the only Software included in the Equipment purchase is embedded Software (internal code). Support services often come with the acquisition of a separately stated maintenance package. Some Vendors provide standard maintenance programs that will meet Purchaser's needs while others will not. Ensure that requirements and penalties are consistent with the business need of Purchaser and the specific Software.]

Vendor shall provide a replacement copy or correction service at no additional cost to Purchaser for any error, malfunction, or defect in Software that, when used as delivered, fails to perform in accordance with the Specifications and that Purchaser shall bring to Vendor's attention. Vendor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial. Vendor shall disclose all known defects and their detours or workarounds to Purchaser.

In addition, Vendor shall provide the following Services:

- 35.1. Help Desk Services. Vendor shall provide Help Desk Services for reporting errors and malfunctions and trouble shooting problems. Vendor's Help Desk Services shall be *[web-based and/or by toll-free telephone lines and/or via e-mail]*. Vendor's Help Desk Services shall include but are not limited to the following Services:
- a) Assistance related to questions on the use of the subject Software;
 - b) Assistance in identifying and determining the causes of suspected errors or malfunctions in Software;
 - c) Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
 - d) Information on errors previously identified by Purchaser and reported to Vendor and detours to these where available; and
 - e) Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.
- 35.2. On-line Support. Vendor may execute on-line diagnostics from a remote Vendor location solely to assist in the identification and isolation of suspected Software errors or malfunctions.

[For the Error and Malfunction Service below, build escalation procedures with different response times and requirements depending upon the severity of specific types of problems.]

- 35.3. Error and Malfunction Service. Within two (2) Business Days of receiving oral or written notification by Purchaser of identified errors or malfunctions in the Software, Vendor will either:
- a) Provide Purchaser with detour or code correction to the Software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problem resolved and any significant operational differences resulting from the correction that is known by Vendor; or
 - b) Provide Purchaser with a written response describing Vendor's then-existing diagnosis of the error or malfunction and generally outlining Vendor's then-existing plan and timetable, subject to Purchaser's approval, for correcting or working around the error or malfunction.
- 35.4. On-Call Support. If a problem occurs that significantly impacts Purchaser's usage of the Software and remains unidentified or unresolved after Purchaser has utilized the detour or code correction prescribed by Vendor pursuant to subsection 35.1 or 35.3 above, Vendor will dispatch a qualified representative to the system location during Business Days and Hours. The representative must arrive within *[_____ ()]* Business Hours. This representative shall have the qualifications necessary to provide:

- a) Advice and assistance in diagnosis and identification of Software errors or malfunctions.
 - b) On-site consultation on correction or detour of identified errors or malfunctions.
- 35.5. When Vendor performs Services pursuant to this Contract that require the use of Purchaser's Equipment, Purchaser agrees to make the Equipment available at reasonable times and in reasonable time increments, and in no event will Purchaser charge Vendor for such use.
- 35.6. Maintenance Release Services. Vendor will provide error corrections and maintenance releases to the Software that have been developed by Vendor. Such releases shall be licensed to Purchaser pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problems resolved including any significant differences resulting from the release which are known by Vendor. Vendor agrees that each maintenance release of Software will be compatible with the then-current unaltered release of Software applicable to the computer system.

36. Software Documentation

[Purchaser's business needs determine whether the manuals must be provided at no additional cost or at a specified cost.]

Vendor shall provide two (2) complete sets of documentation for each Software Order, including technical, maintenance, and installation information. Vendor shall also provide two (2) complete sets of documentation for each updated version of Software Vendor provides pursuant to the **Software Upgrades and Enhancements** section. Vendor shall provide the documentation on or before the date Vendor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Software documentation shall be comprehensive, well structured, and indexed for easy reference. If Vendor maintains its technical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Vendor may also provide such information on CD-ROM. Vendor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

Contract Administration

37. Legal Notices

- 37.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid *[certified mail, return receipt requested, via facsimile or by electronic mail]*, to the parties at the addresses *[and fax numbers, e-mail addresses]* provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate,

shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form.

To Vendor at:

[Vendor]

Attn:

[Vendor address]

Phone:

Fax:

E-mail:

To Purchaser at:

State of Washington

[Purchaser]

Attn: [Purchaser Contract Administrator]

[Purchaser address]

Phone:

Fax:

E-mail:

37.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

37.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

38. Vendor Account Manager

Vendor shall appoint an Account Manager for Purchaser’s account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor’s Account Manager will be the principal point of contact for Purchaser concerning Vendor’s performance under this Contract. Vendor shall notify Purchaser Contract Administrator and Purchaser [Project or Business] Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

Vendor Account Manager:

Address:

Phone:

Fax:

E-mail:

39. Purchaser [Project or Business] Manager

Purchaser shall appoint [name] who will be the Purchaser [Project or Business] Manager for this Contract and will provide oversight of the activities conducted hereunder. Purchaser [Project or Business] Manager will be the principal contact for Vendor concerning business activities under this Contract. Purchaser shall notify Vendor, in writing, when there is a new Purchaser [Project or Business] Manager assigned to this Contract.

40. Section Headings, Incorporated Documents and Order of Precedence (required)

Section Headings, Incorporated Documents and Order of Precedence

Incorporated Documents – This subsection lists all documents that are part of the Contract and therefore binding on Vendor and Purchaser. Any documents not listed may not be enforceable against the parties. When information to be incorporated is expressed through a transitory or dynamic medium (e.g., videotape or information from a web site), Purchaser needs to ensure that a copy of the medium as of the Effective Date of the Contract is retained (e.g., videotape of materials, printed copy of web pages, etc.)

Order of Precedence – This subsection provides the priority of the Contract documents in the event of inconsistency among those documents. The standard order of precedence provides that federal and state law prevail; then the Contract; then, depending on the circumstances, documents related to the acquisition, such as the RFX, the Vendor's Response, etc.

- 40.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 40.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
- a) Schedules A, B and C *[if applicable]*; *[include other Schedules, if appropriate]*
 - b) *[Purchaser]* *[RFX]* dated *[date]*;
 - c) Vendor's Response to *[Purchaser]* *[RFX]* dated *[date]*;
 - d) The terms and conditions contained on Purchaser's Order Documents, if used; and
 - e) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Equipment to Purchaser.
- 40.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- a) Applicable federal and state statutes, laws, and regulations;
 - b) Sections of this Contract;
 - c) Schedule A; *[include other Schedules, if appropriate]*
 - d) *[Purchaser]* *[RFX]* dated *[date]*;
 - e) Vendor's Response to *[Purchaser]* *[RFX]* dated *[date]*;
 - f) The terms and conditions contained on Purchaser's Order Documents, if used; and
 - g) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Equipment to Purchaser.

41. Entire Agreement *(required)*

Entire Agreement – This section establishes that the Contract constitutes the entire agreement between Purchaser and Vendor with respect to the subject matter of this Contract and supersedes all previous discussions, bid processes, and agreements, except as provided in the section titled Vendor Commitments, Warranties, and Representations. Important performance specifications, communications regarding

goods and services to be provided, Vendor assurances, etc., that are not already written into the Contract or attached as a schedule should be included in the list of incorporated documents in the section titled Section Headings, Incorporated Documents and Order of Precedence.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

42. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by Purchaser and Vendor Contracting Officers. Only Purchaser Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of Purchaser.

43. Independent Status of Vendor *(required)*

Independent Status of Vendor – This section makes clear that Vendor is an independent contractor and neither Vendor nor Vendor’s employees are Purchaser’s employees. Because Vendor is an independent contractor, Purchaser is not required to pay employee taxes such as worker’s compensation, FICA, and unemployment compensation.

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, or Title 51 RCW.

44. **Governing Law** *(required)*

Governing Law – Washington state law shall govern the Contract. Since commercial law varies from state to state, it is important to include the governing law, particularly when dealing with out-of-state vendors.

Venue – The venue is the locality where a trial occurs. Any lawsuit involving the Contract would be filed in the county stated in this clause. For agencies in the Olympia area, for example, this is Thurston County.

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for *[Thurston or other appropriate county]* County, Washington.

45. **Subcontractors**

Subcontractors – This section defines conditions under which Vendor can subcontract work. Generally, Vendor's Response will identify the Subcontractors. When the service of a Subcontractor is required after award, and the Subcontractor was not identified in the Response, Vendor must request advance approval in writing from Purchaser for use of the selected Subcontractor.

Vendor may, with prior written permission from Purchaser Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employees, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, and Software Ownership** sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Software Ownership, Publicity and Review of Vendor's Records** sections of this Contract shall apply to all Subcontractors.

46. Assignment

Assignment – Assignment can occur for several reasons—for example, when one company buys another and the new company takes over responsibility for performing contractual duties. This section describes the conditions for either Purchaser or Vendor to assign this Contract. Vendor may not assign or transfer its rights, duties, or obligations without written notification to Purchaser and receipt of Purchaser’s written consent. Purchaser may assign it to another entity within Washington.

[If Vendor performance or financial condition is a problem, it may be prudent to allow Vendor assignment “at Purchaser’s sole option” rather than stating that Purchaser’s consent “shall not be unreasonably withheld” in the following subsection.]

- 46.1. With the prior written consent of Purchaser Contracting Officer, which consent shall *[not be unreasonably withheld –OR– be at Purchaser’s sole option]*, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff.
- 46.2. Purchaser may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

47. Publicity *(required)*

Publicity – This section establishes that Vendor will not use any advertising, sales promotion, or other publicity materials in which Purchaser’s name is specifically stated, implied, or can be inferred without Purchaser’s consent.

- 47.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor’s products by Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.
- 47.2. Vendor agrees to submit to Purchaser, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein Purchaser’s name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser’s name therewith may, in Purchaser’s judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Purchaser *prior* to such use.

[Use of the following subsection is optional.]

- 47.3. Either Party may use the other Party’s name and logo (except for the State seal) in advertising, sales promotion, and other publicity materials relating to this Contract, without royalty, provided that this Contract and the relationship between the parties is not misrepresented.

48. **Review of Vendor's Records *(required)***

Records, Documents and Reports – This section requires Vendor to maintain books, records and documents to reflect Vendor's compliance with Contract requirements and all direct and indirect costs expended in the performance of the Contract for potential audit.

- 48.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 48.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within *[Thurston, or other appropriate county]* County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 48.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 48.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

General Provisions

49. **Patent and Copyright Indemnification *(required)***

Patent and Copyright Indemnification – This section establishes each party's responsibility in case of a patent, copyright, or other intellectual property right infringement.

- 49.1. Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product *[and/or Work Product]* supplied hereunder, or Purchaser's use of the Product *[and/or Work Product]* within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:
 - a) Promptly notifies Vendor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to

the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and

- b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

49.2. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser the right to continue using the Product *[and/or Work Product]* or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product *[and/or Work Product]* is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product *[and/or Work Product]* and provide Purchaser a refund. *[Insert this sentence if Contract includes Work Product: "In the case of Work Product, Vendor shall refund to Purchaser the entire amount Purchaser paid to Vendor for Vendor's provision of the Work Product."]* In the case of Product, Vendor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and the Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of *[four (4)]* years commencing on the date of purchase and shall be an equal amount per year over said useful life. *[To ensure the accurate useful life, consult the Washington State Administrative and Accounting Manual, Chapter 30 (Fixed Asset Policies) for Fixed Asset Commodity Class Code List and Useful Life Schedule (<http://www.ofm.wa.gov/policy/30.50.htm>).]* The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Vendor.

49.3. Vendor has no liability for any claim of infringement arising solely from:

- a) Vendor's compliance with any designs, specifications or instructions of Purchaser;
- b) Modification of the Product *[and/or Work Product]* by Purchaser or a third party without the prior knowledge and approval of Vendor;
- c) Use of the Product *[and/or Work Product]* in a way not specified by Vendor; or,
- d) Use of the Product *[and/or Work Product]* with equipment not supplied by Vendor;

unless the claim arose against Vendor's Product *[and/or Work Product]* independently of any of these specified actions.

50. Save Harmless *(required)*

Save Harmless – This section protects Purchaser and Vendor from the other party's negligence or omissions, per RCW 4.92.270. Vendor holds Purchaser and Purchaser employees harmless from claims, suits, or actions arising from Vendor's negligence or omissions while performing its Contractual duties. Standard indemnification language and explanations are provided by the Department of General Administration, Office of Risk Management at their web site <http://www.ofm.wa.gov/rmd/contrman.htm> or call (360) 902-7303.

Vendor shall defend, indemnify, and save Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their

officers, employees, or agents. Vendor's obligation to defend, indemnify, and save Purchaser harmless shall not be eliminated or reduced by any alleged concurrent Purchaser negligence.

[At Vendor's insistence, and after Purchaser has evaluated risks and determined that a limited save harmless clause is acceptable, the last sentence may be replaced with the following: "Vendor shall be required to defend, indemnify, and save Purchaser harmless only to the extent claim is caused in whole or in part by Vendor's negligent acts or omissions."]

51. Insurance

Insurance – Businesses that provide services to the State must carry liability insurance to protect the State's interests. Contractual insurance in a commercial general liability policy provides coverage to protect the State from risks assumed by Vendor, whether oral or written.

Insurance is required only when necessary for the type of purchase being made. Purchaser determines the categories to include and their minimum limits based upon the particular Contract and upon the risk to Purchaser. The amounts specified here are illustrative only. For more specific information on insurance requirements, call the Office of Financial Management, Division of Risk Management, (360) 902-7311 or visit their web site at <http://www.ofm.wa.gov/rmd/forms.htm>

- 51.1. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to Purchaser within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at Purchaser's sole option, result in this Contract's termination.
- 51.2. The minimum acceptable limits shall be as indicated below, with no deductible *[or state an acceptable deductible amount]* for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
 - c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
 - e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon subsection 51.3 below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and

- f) Crime Coverage with a deductible not to exceed \$1 million, conditioned upon subsection 51.3 below, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.
- 51.3. For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming Purchaser as an additional insured and providing Purchaser with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of this Contract provide for Purchaser's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to Purchaser, in the amount of \$1 million, during the initial and any subsequent terms of this Contract and for six (6) years beyond the expiration or termination of this Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at Purchaser's sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Contract means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by Purchaser (the beneficiary) of a written demand therefor.
- 51.4. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name Purchaser as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number *[XXX-XXX-XXX]* and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.
- 51.5. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 51.6. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 51.7. Vendor shall furnish to Purchaser copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at Purchaser's sole option, result in this Contract's termination.
- 51.8. By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to Purchaser in this Contract.

52. Industrial Insurance Coverage *(required)*

Industrial Insurance Coverage – This section requires Vendor to comply with Title 51 RCW, Washington’s industrial insurance law. With few exceptions, Title 51 RCW holds Purchaser responsible for ensuring that Vendor has such coverage.

Agencies can verify a Vendor’s compliance with Title 51 RCW by contacting Field Audit Compliance of the Department of Labor and Industries, (360) 902-4769 or (360) 902-4753 in Olympia, or e-mail at verifystatecontracts@lni.wa.gov.

[If Vendor has operations in Washington, include this section. If Vendor has no operations in Washington, do not include this section.]

Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an “employer” as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

53. Licensing Standards

Licensing Standards – This section requires Vendor to comply with applicable federal, state, county, or municipal standards for licensing and accreditation to assure quality of service.

Vendor must register with the Washington State Department of Revenue prior to performing work under the Contract. Vendor will be issued a State Uniform Business Identifier (UBI) number to be used in payment of state taxes. Out-of-state vendors performing work in Washington State are required to have UBI numbers.

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

54. OSHA/WISHA

OSHA/WISHA – This section establishes that Vendor warrants that its Products are designed to meet federal and state safety and health regulations.

Vendor represents and warrants that its Products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor agrees to indemnify and hold Purchaser harmless from all damages assessed against Purchaser as a result of the failure of the Products furnished under this Contract to so comply.

55. Uniform Commercial Code (UCC) Applicability

UCC Applicability – This section establishes that the Contract provisions have precedence over any conflicting provisions of the UCC, as set forth in Title 62A RCW.

- 55.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 55.2. To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the UCC, except when to do so would result in an absurdity.
- 55.3. In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

56. Antitrust Violations

Vendor and Purchaser recognize that in actual economic practice overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

57. Compliance with Civil Rights Laws *(required)*

Compliance with Civil Rights Laws – This section requires Vendor not to discriminate against any person for reason of age, sex, race, creed, color, national origin, or disability. Noncompliance or refusal to comply with the nondiscrimination laws, regulations or policies may result in rescission, cancellation or termination of the Contract.

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor’s noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with Purchaser.

58. **Severability** *(required)*

Severability – This section provides that if any Contract term or condition is determined to be invalid, the other Contract terms and conditions are not automatically invalid.

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

59. **Waiver** *(required)*

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

60. **Treatment of Assets**

Treatment of Assets – This section provides that title to all property furnished by Purchaser and/or purchased by Vendor as a reimbursable item under the Contract remains with Purchaser. Vendor is responsible for loss of or damage to any such property and shall surrender the property upon Contract completion.

- 60.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Title to Equipment** *[and Ownership/Rights in Data]* section[s]. As used in this section **Treatment of Assets**, if the “property” is Vendor’s proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 60.2. Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 60.3. Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor’s negligence or that results from Vendor’s failure to maintain and administer that property in accordance with sound management practices.
- 60.4. Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 60.5. Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 60.6. All reference to Vendor under this section shall also include Vendor’s employees, agents, or Subcontractors.

61. Vendor's Proprietary Information *(required)*

Vendor's Proprietary Information – This section sets forth Purchaser's obligation to protect Vendor's rights and interests in Vendor's Proprietary Information to the extent consistent with law. It is Vendor's responsibility to identify Vendor's Proprietary Information. Purchaser is obligated to take reasonable steps not to inadvertently or intentionally disclose Vendor's Proprietary Information; however, Purchaser may be required to disclose such information pursuant to a public records request. Vendor may claim Proprietary rights in various forms of information that it provides to Purchaser in performance of the Contract, such as software, data, technical information, etc., but ultimately a court – *not* Purchaser and *not* Vendor - will determine whether Vendor's Proprietary Information is protected from public disclosure pursuant to chapter 42.17 RCW or other applicable laws.

Vendor acknowledges that Purchaser is subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Vendor to be Proprietary Information, must be clearly identified as such by Vendor. To the extent consistent with chapter 42.17 RCW, Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

Disputes and Remedies

62. Disputes *(required)*

Disputes – When a bona fide dispute arises between Purchaser and Vendor, remedy is provided via this dispute process, which will generally precede any court action.

[If this is a simple contract for \$10,000 or less, only the following section need be included.]

In the event a dispute arises under this Contract, it shall be handled by a Dispute Resolution Panel in the following manner. Each party to this Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

[If this is a complex contract or is for more than \$10,000 use the following subsections.]

- 62.1. In the event a bona fide dispute concerning a question of fact arises between Vendor and Purchaser and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 62.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the

response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

- a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
- b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

[Include the following subsection whenever possible so that arbitration will be binding upon the parties.]

62.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.

62.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. *[If the previous subsection on the decision of the Dispute Resolution Panel being binding is omitted from the Contract, add: “Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.”]*

62.5. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

62.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

63. Attorneys’ Fees and Costs

63.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys’ fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

63.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys’ fees incurred as a result of the alternative dispute resolution method.

64. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

65. Liquidated Damages

Liquidated Damages – This section establishes the amount of damages upon the breach of certain contractual requirements. If the timeline for the performance of any contractual requirement is critical to Purchaser, then this section may be used. The amount is determined through a good faith effort to estimate damages should a breach occur, when the actual damages amount is not reasonably ascertainable.

[If this section is not used, strike references to it in other sections by searching for the term “Liquidated Damages.”]

65.1. Liquidated Damages – General

- a) Any delay by Vendor in meeting the *[Delivery Date, Installation Date, maintenance or repair date, or other applicable date]* set forth in this Contract will interfere with the proper implementation of Purchaser’s programs and will result in loss and damage to Purchaser.
- b) As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, Purchaser and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following subsections and the parties agree that Vendor shall pay such amounts as liquidated damages and not as a penalty.
- c) Liquidated damages provided under the terms of this Contract are subject to the same limitations as provided in the section titled **Limitation of Liability**.

65.2. Liquidated Damages – Specific

- a) If Vendor does not have the Equipment *[delivered by the Delivery Date or installed by the Installation Date, whichever is applicable]* agreed upon between Purchaser and Vendor, then Vendor shall provide a revised *[Delivery Date or Installation Date, whichever is applicable]* and pay to Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified *[Delivery Date or Installation Date]* and the date that Vendor actually *[delivers or installs]* the Equipment and Equipment is operational in accordance with the **Standard of Performance and Acceptance** section an amount of *[fixed dollar amount per day or percentage of total cost (purchase price plus applicable tax and shipping) of the delinquent Equipment per day]*.
- b) If the revised *[Delivery Date or Installation Date, whichever is applicable]* is more than *[_____] (_____) calendar days* from the original *[Delivery Date or Installation Date, whichever is applicable]*, then by written notice to Vendor, Purchaser may immediately terminate the right of Vendor to [deliver or install] the Equipment and Purchaser may obtain substitute Equipment from another vendor. In this event, Vendor shall be liable for fixed and agreed-upon liquidated damages, in lieu of all other damages due to such delay, in the amount specified above, until substitute Equipment is *[delivered or installed]*, or a maximum of *[_____] (_____) [length of time that is appropriate for specific acquisition]* calendar days from the original *[Delivery Date or Installation Date]*, whichever occurs first.

[Include the following subsection for a guaranteed response time for maintenance.]

- c) If Vendor’s maintenance personnel fail to arrive at Purchaser’s Equipment site within *[insert agreed upon time period]* after notification by Purchaser that maintenance is

required, Vendor shall pay to Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such non-responsiveness, for each hour between the agreed *[insert agreed upon time period]* response time and the actual response time an amount of *[_____]* dollars *[(\$_____)]* per hour for each “late” hour or part thereof (prorated) beginning with the time of notification by Purchaser and ending with the time that Vendor’s maintenance personnel arrive at Purchaser’s Equipment site.

66. Failure to Perform

Failure to Perform –This section establishes that Purchaser may withhold monies after written notification that Vendor has failed to perform any substantial Contract obligation.

If Vendor fails to perform any substantial obligation under this Contract, Purchaser shall give Vendor written notice of such Failure to Perform. If after *[thirty (30)]* calendar days *[or other appropriate time period]* from the date of the written notice Vendor still has not performed, then Purchaser may withhold all monies due and payable to Vendor, without penalty to Purchaser, until such Failure to Perform is cured or otherwise resolved.

67. Limitation of Liability *(required)*

- 67.1. The parties agree that neither Vendor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on a Date Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA, Termination for Default, and Review of Vendor’s Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 67.2. Neither Vendor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, Purchaser, or their respective Subcontractors.
- 67.3. If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.
- 67.4. Neither party shall be liable for personal injury to the other party or damage to the other party’s property except personal injury or damage to property proximately caused by such party’s respective fault or negligence.

Contract Termination

68. Termination for Default *(required)*

Termination for Default – This section allows termination of the Contract due to documented deficiencies in Vendor’s or Purchaser’s performance.

- 68.1. If either Purchaser or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within *[thirty (30) calendar days or other appropriate time period]* or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by Purchaser to terminate the Contract.
- 68.2. In the event of termination of this Contract by Purchaser, Purchaser shall have the right to procure the Products and Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Products and Services and the replacement costs of such Products and Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to Purchaser resulting from Vendor’s breach. Purchaser shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe Purchaser for Vendor’s default.
- 68.3. If the Failure to Perform is without the defaulting party’s control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 68.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

69. Termination for Convenience *(required)*

Termination for Convenience – This section allows the Contract to be terminated when it is in Purchaser’s best interest.

When, at the sole discretion of Purchaser, it is in the best interest of the State, Purchaser Contracting Officer may terminate this Contract, in whole or in part, by *[fourteen (14) calendar days or other appropriate period of time]* written notice to Vendor. If this Contract is so terminated, Purchaser is liable only for payments required by the terms of this Contract for Products and Services received and Accepted by Purchaser prior to the effective date of termination.

70. Termination for Withdrawal of Authority

In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, Purchaser may terminate this Contract by *[seven (7) calendar days' or other appropriate time period]* written notice to Vendor. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar products or services from a third party.

71. Termination for Non-Allocation of Funds

[If no periodic future payments are required under the Contract, this clause may be omitted.]

If funds are not allocated to Purchaser to continue this Contract in any future period, Purchaser may terminate this Contract by *[seven (7) calendar days or other appropriate time period]* written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar products or services from a third party.

72. Termination for Conflict of Interest

Termination for Conflict of Interest – This section provides that Purchaser may, by written notice, terminate this Contract if Purchaser finds that any gratuity, bribe, gift, or extra payment in any form has been offered or given by Vendor with the intent to secure the Contract or receive favorable treatment with regard to any aspect of the Contract.

Purchaser may terminate this Contract by written notice to Vendor if Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, Purchaser shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Contract.

73. Termination Procedure

Termination Procedure – This section provides that if Purchaser terminates the Contract, Vendor is required to deliver to Purchaser any property produced to the point of termination as part of the Contract performance. The steps Vendor must follow once a notice of termination is received shall be delineated in Purchaser's notice of termination.

- 73.1. In addition to the procedures set forth below, if Purchaser terminates this Contract, Vendor shall follow any procedures Purchaser specifies in Purchaser's notice of termination.
- 73.2. Upon termination of this Contract, Purchaser, in addition to any other rights provided in this Contract, may require Vendor to deliver to Purchaser any property, Products, or Work Products specifically produced or acquired for the performance of such part of this

Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

- 73.3. Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon price, if separately stated, for the Products or Services received and accepted by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 73.4. Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

74. Covenant Against Contingent Fees

Covenant Against Contingent Fees – This section requires Vendor to warrant that no person or selling agent has been employed or retained to solicit or secure the Contract. A firm cannot hire an individual to use “influence” to obtain a contract.

[Include this section when federal funds are used for the purchase or in other special circumstances.]

- 74.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.
- 74.2. In the event Vendor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser, or, in Purchaser’s discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Contract Execution

75. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

76. Counterparts

Counterparts – This section provides for counterparts or duplicate originals of the Contract. Each party may sign a separate signature page, each of which will be made a part of the Contract and be considered an original.

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

Signature Blocks – This section provides a statement of understanding of and agreement to the Contract, followed by signature blocks.

[Do not have the signature block appear on a page by itself. Include a portion of the Contract text at the top of the page.]

Only those persons with authority to bind the parties may sign the Contract. It is good business practice to have Vendor sign the document first.

Upon execution, signed copies of the Contract should be provided to all interested parties including, but not limited to, Vendor Contracting Officer, Purchaser [Project or Business] Manager, and Purchaser Contracting Officer. In most instances, Contract performance may begin immediately or may be scheduled for a predetermined date.]

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

[Add Effective Date below.]

This Contract is effective this _____ day of _____, 2____.

Approved
State of Washington
[Purchaser]

Approved
[Vendor]

Signature

Signature

Print or Type Name

Date

Print or Type Name

Date

Title

Title

Each Purchaser that is a state agency is required to have its contract approved as to form by the Attorney General’s Office (AGO). Approval as to form by the AGO verifies the contract instrument’s legality but does not imply concurrence with or approval of the content.

Approved as to Form

State of Washington
Office of the Attorney General

Signature

Print or Type Name

Assistant Attorney General

Title

Date

Vendor Information

Vendor’s UBI Number:

Minority or Woman Owned Business Enterprise

Yes _____ No ☐
(Certification Number)

Schedule A
Authorized Product and Price List

as of *[date]*

for
Contract Number *[XXX-XXX-XXX]*
with
[Vendor]

[Vendor] is authorized to sell **only the Products identified in this Schedule A at the Prices set forth in this Schedule A** under this Contract.

[List information required to be included by the Vendor, e.g., Product category, name, description, Prices, training Prices, installation Prices, upgrade Prices, maintenance Prices, etc.]

Schedule B
Problem Escalation Procedures
and
Disaster Recovery Plan

Vendor will provide this document in response to a requirement in the solicitation document. Be sure that the problem escalation procedures in this schedule are consistent with the information in sections 16: Equipment Warranty, 17: Equipment Maintenance and 35: Software Maintenance and Support Services.

Schedule C
MWBE Certification